

The Hon. Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTHER HOFFMAN; SARAH DOUGLASS;
ANTHONY KIM; and IL KIM and DARIA
KIM, husband and wife and the marital
community comprised thereof, on behalf of
themselves and on behalf of others similarly
situated,

Plaintiffs,

vs.

TRANSWORLD SYSTEMS
INCORPORATED; PATENAUDE AND
FELIX, A.P.C.; MATTHEW CHEUNG, and the
marital community comprised of MATTHEW
CHEUNG and JANE DOE CHEUNG,
National Collegiate Student Loan Trust 2003-1,
National Collegiate Student Loan Trust 2004-1,
National Collegiate Student Loan Trust 2004-2,
National Collegiate Student Loan Trust 2005-1,
National Collegiate Student Loan Trust 2005-2,
National Collegiate Student Loan Trust 2005-3,
National Collegiate Student Loan Trust 2006-1,
National Collegiate Student Loan Trust 2006-2,
National Collegiate Student Loan Trust 2006-3,
National Collegiate Student Loan Trust 2006-4,
National Collegiate Student Loan Trust 2007-1,
National Collegiate Student Loan Trust 2007-2,
National Collegiate Student Loan Trust 2007-3,
National Collegiate Student Loan Trust 2007-4,
National Collegiate Master Student Loan Trust,
and DOES ONE THROUGH TEN,

Defendants.

NO. C18-1132 TSZ

**PLAINTIFFS' RESPONSE TO
NATIONAL COLLEGIATE STUDENT
LOAN TRUSTS DEFENDANTS'
MOTION TO EXTEND DEADLINE TO
RESPOND TO COMPLAINT**

NOTE ON MOTION CALENDAR:
September 25, 2020

RESPONSE TO NATIONAL COLLEGIATE STUDENT
LOAN TRUST DEFENDANTS' MOTION TO EXTEND
DEADLINE TO RESPOND TO COMPLAINT - 1
(Case No. C18-1132 TSZ)

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I. INTRODUCTION AND RELIEF REQUESTED

Plaintiffs request this court stay a ruling on National Collegiate Student Loan Trusts Defendants' Motion to Extend Deadline to Respond to Complaint ("Motion to Extend Deadline") until the issue of Andrews Skinner, P.S.'s ("Andrews Skinner's") authority to represent the National Collegiate Student Loan Defendants ("NCSLTs") is resolved. If Andrews Skinner is found to be without authority to represent the NCSLTs, Plaintiffs request that the Motion to Extend Deadline be denied.

II. RELEVANT FACTS

Plaintiffs are Washington residents who Defendants Transworld Systems Incorporated ("TSI"), Patenaude and Felix, A.P.C. ("P&F"), and Matthew Cheung ("Cheung") collected from and obtained judgments against in Washington's superior courts.¹ Dkt. #61 at pp. 9-20. TSI, P&F, and Cheung all collected or attempt to collect debts from the Plaintiffs on behalf of the NCSLTs. *Id.*

Plaintiffs allege that TSI, P&F, and Cheung knowingly used false declarations of TSI employees to collect from numerous Washington consumers and obtain judgments against them in Washington courts. *See e.g. id.* at pp. 20-21, ¶¶121-24. In the false declarations, made under penalty of perjury, TSI employees attested that they had reviewed a schedule of student loans showing that the Washington consumers' student loans were assigned to the NCSLTs. *See e.g. id.* at pp. 21-22, ¶¶124-26. Yet, the TSI employees could not have reviewed those schedules, because the schedules are either lost, or do not exist. *Id.* at p. 10, ¶¶56-57, p. 14, ¶¶80-81, p. 19, ¶¶109-10. Plaintiffs' allegations are supported by findings of the Consumer

¹ The judgments against each of the Plaintiffs, except for Esther Hoffman, have been vacated.

1 Financial Protection Bureau (“CFPB”) *Id.* Those findings are found in both a Consent Order in
 2 the administrative proceeding of *Transworld Sys.*, Admin. Proc. No. 2017-CFPB-
 3 0018 (Consumer Fin. Prot. Bureau Sept. 18, 2017), and a Consent Judgment that is at the center
 4 of ongoing litigation in the U.S. District Court in Delaware, *Financial Protection Bureau v. The*
 5 *National Collegiate Master Student Loan Trust et al.*, Case No. 17-cv-01323-GMS (D. Del
 6 Sep. 18, 2017). Dkt. #61, pp. 22-28.

7
 8 Plaintiffs brought this putative class action in King County Superior Court. Dkt. #1-1.
 9 Plaintiffs’ complaint alleged claims under Washington’s Consumer Protection Act, RCW 19.86
 10 et seq. (“WCPA”), and the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq.
 11 (“FDCPA”) against TSI, P&F, and Cheung. Dkt. # 1-1 at pp. 35-40. TSI, P&F, and Cheung
 12 removed the action to this Court, Dkt. #1, and moved to dismiss Plaintiffs’ claims under FRCP
 13 12(b)(6). Dkt. #15. The District Court found that Plaintiffs had stated claims under the FDCPA,
 14 but those claims were time-barred under the FDCPA’s statute of limitations; the Court
 15 concluded therefore that Plaintiffs’ CPA claims based on the violations of the FDCPA were
 16 also time-barred. Dkt. #29 at pp. 9-15. Ultimately, all of Plaintiffs’ claims were dismissed. Dkt.
 17 #46.

18
 19 Plaintiffs appealed the dismissal of their claims. Dkt. #47; *Hoffman v. Transworld Sys.*,
 20 806 F. App’x 549 (9th Cir. 2020). The Ninth Circuit overturned the dismissal of a majority of
 21 Plaintiffs’ CPA claims, finding that Plaintiffs had stated a claim for relief based on their
 22 allegation that TSI, P&F, and Cheung were filing false declarations to collect on claims. 806 F.
 23 App’x at 551-53. The Ninth Circuit also ordered the District Court to allow Plaintiffs to amend
 24 their Amended Complaint to clarify elements of their claims. *Id.* Plaintiffs filed their Second
 25 Amended Complaint and joined the NCSLTs. Dkt. #61.

On August 10, 2020, Andrews Skinner filed a Notice of Appearance claiming to represent the NCSLTs. Dkt. #69. Andrews Skinner is also local counsel for TSI in this matter. Dkt. #49. TSI, P&F, and Cheung subsequently moved to strike portions of Plaintiffs' Second Amended Complaint that referenced the CFPB Consent Judgment. Dkt. #76. The Consent Judgment was not entered, not because the facts contained therein were proven incorrect, but instead because the attorneys who signed on behalf of the NCSLTs did not have authority to do so. *Consumer Financial Protection Bureau v. National Collegiate Master Student Trust, C.A.* No. 17-1323 (MN), 2020 WL 2915759, at *6 (D. Del. May 31, 2020).

On September 11, 2020, Justin Homes of Sessions, Fishman, Nathan & Israel, who represents TSI, emailed Plaintiffs' counsel requesting an extension of time for the NCSLT's to file an answer to the Second Amended Complaint. Declaration of Guy Beckett In Support of Plaintiffs' Response to National Collegiate Student Loan Trust Defendants' Motion to Extend Deadline to Respond to Complaint ("Beckett Decl."), ¶3 Ex. A. On September 14, 2020, Andrews Skinner, claiming to be acting on behalf of the NCSLTs, filed a Motion to Extend Deadline. Dkt. #77. The request sought a continuance until fourteen days after notice of the Court's action on the pending motion to strike portions of the Second Amended Complaint (Dkt. #76), which was filed by the other defendants. *Id.* at pp.2-4. The motion is scheduled for hearing on September 25, 2020. *Id.*

On September 17, 2020, Plaintiffs filed a motion asking this Court to require Andrews Skinner to provide proof that they are legally authorized and directed to represent the NCSLTs. Dkt. #78 ("Show Authority Motion.") The Show Authority Motion is presently scheduled to be considered on October 2, 2020. *Id.* However, on September 25, 2020, counsel Justin Homes called Plaintiffs' counsel seeking a continuance to the response deadline to the Motion to Show

1 Authority. Beckett Declaration at ¶4. Plaintiffs have agreed to renege their Show Authority
 2 Motion to October 9, 2020. *Id.*

3 Plaintiffs now request this Court stay a ruling on the instant Motion to Extend Deadline
 4 until there is a ruling on whether Andrews Skinner has authority to represent the NCSLTs.

5 **III. ARGUMENT**

6 **A. The Court Has Authority to Manage Its Case Schedule to Ensure a Just, Speedy and** 7 **Inexpensive Resolution of Every Action.**

8 The Federal Rules of Civil Procedure must be “construed, administered and employed
 9 by the court and parties to secure the just, speedy and inexpensive determination of every
 10 action.” FRCP 1. “Federal courts have inherent powers to manage their own proceedings and to
 11 control the conduct of those who appear before them[.]” *Unigard Sec. Ins. Co. v. Lakewood*
 12 *Eng’g & Mfg. Corp.*, 982 F.2d 363, 367 (9th Cir. 1992) (federal courts have inherent authority
 13 “to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”)

15 **B. Staying A Ruling On the Motion to Extend Deadline Will Ensure the Most Just,** 16 **Speedy and Inexpensive Resolution of the Motions Before the Court.**

17 Staying a ruling on the NCSLTs’ Motion to Extend Deadline until a decision on
 18 whether Andrews Skinner has legal authority to represent the NCSLTs promotes the most cost
 19 effective and efficient resolution of the issues currently before the Court. If Andrews Skinner
 20 does not have authority to represent the NCSLTs, it also does not have authority to bring the
 21 Motion to Extend Deadline on behalf of the NCSLTs and the Motion to Extend must be denied.

23 **VII. CONCLUSION**

24 For the forgoing reasons, Plaintiffs request the Court stay a decision on the NCSLTs
 25 Motion to Extend Deadline until after the Court rules on the Show Authority Motion. A
 26 proposed Order is submitted with this response.

DATED: September 23, 2020.

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